

Special Civil Application No 39 of 96

Date of decision: 20/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SALAM ABDUL JINULLASA vs STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr. S.P. Dave, learned AGP for the respondents.

Coram : MR.JUSTICE J.M.PANCHAL

ORAL JUDGEMENT

1. The order of detention dated November 25, 1995 passed by the

District Magistrate, Surat in exercise of powers conferred on him by sub-section 2 of Section-3 of the Gujarat Prevention of Anti Social Activities Act, 1985 ("The Act" for short ) against the petitioner is subject matter of challenge in the present petition which is filed under Article 226 of the Constitution of India.

2. The grounds of detention indicate that 5 cases are pending trial in Court against detenu for contravention of the provisions of Bombay Prohibition Act, 1949. On the basis of above mentioned cases and materials connected therewith as well as on the basis of statements of 4 witnesses, the Detaining Authority came to the conclusion that the detenu is a bootlegger within the definition of section 2(b) of the Act, and his activities as a bootlegger disturbed maintenance of public order. The Detaining Authority, therefore, with a view to preventing the detenu from acting in a manner prejudicial to the maintenance of the public order passed impugned order of detention.

3. It is not in dispute that the procedural requirements enjoined by the Act and Article 22(5) of the Constitution are complied with by the Detaining Authority, the Advisory Board and the State Government.

4. Several contentions have been urged by the learned counsel for the petitioner while assailing validity of the order of detention. However, it is not necessary to refer to all of them except one, which in my opinion, merits acceptance. The learned counsel for the petitioner submitted that the last case i.e. CR No. 350/95 was registered at Palsana Police Station against the detenu for contravention of the provisions of Bombay Prohibition Act, 1949 on May 11, 1995, whereas the Sponsoring Authority recorded statements of 4 witnesses on August 30, 1995 which allegedly indicated that the activities of the detenu as a bootlegger disturbed maintenance of public order and, thereafter the Detaining Authority passed impugned order of detention on November 25, 1995 and as there is unexplained delay in passing the order of detention, the same deserves to be set aside. This ground of challenge is raised in paragraph-13 (C) of the petition.

5. Though respondents are duly served, no affidavit in reply is filed by any of the respondents controverting the statements made in the petition.

6. In the matter relating to preventive detention, delay may occur at three stages; (1) delay may occur between the prejudicial activities of an individual and submission of papers by the Relevant Authority to the Detaining Authority; (2) between

the receipt of papers by the Detaining Authority and passing of the order of detention and; (3) between the impugned order and arrest of the detenu in pursuance of order. It is well settled that it is obligatory on the Detaining Authority to explain the delay, if any, which might have taken place at any stage and if the delay remains unexplained, the Court may come to the conclusion that the Detaining Authority has not applied its mind to the aspect of immediate need to detain the detenu or that there was no genuine satisfaction of the Detaining Authority as required by the statute.

7. From the facts of the present case, it is evident that the last case i.e. CR No. 350/95 was registered at Palsana Police Station against the detenu for contravention of the provisions of Bombay Prohibition Act, 1949 on May 11, 1995. The Sponsoring Authority recorded statements of 4 witnesses on August 30, 1995 which allegedly indicated that the activities of the detenu as a bootlegger disturbed maintenance of public order. Mr. S.P. Dave, learned AGP appearing for the respondents has gone through the file of the State Government pertaining to detention of the detenu and has stated that proposal to detain the detenu was forwarded by the Sponsoring Authority to the Detaining Authority on September 1, 1995 through D.S.P., Surat. Mr. Dave, learned counsel appearing for the respondents has also stated that the proposal dated September 1, 1995 was forwarded by the D.S.P., Surat to the Detaining Authority on November 8, 1995 and, thereafter the order of detention was passed by the Detaining Authority on November 25, 1995. Obviously, there is delay between prejudicial activities attributed to the detenu and forwarding of proposal to the Detaining Authority. There is also delay between receipt of the papers by the Detaining Authority and passing of the order of detention. The delay between prejudicial activities attributed to the detenu and forwarding of proposal to the Detaining Authority is not explained. Similarly, the delay between receipt of papers by the Detaining Authority and passing of the order of detention is also not explained. Having regard to the facts of the case, I am of the opinion that the delay in passing order of detention has snapped the live link between the prejudicial activities attributed to the detenu and purpose which is sought to be achieved by passing the order of detention. On the facts and in the circumstances of the case, and more particularly in view of the unexplained delay, I am of the opinion that the Detaining Authority did not apply its mind to the aspect of immediate need to detain the detenu, and, therefore, there was no genuine satisfaction of the Detaining Authority as required by the Statute. Under the circumstances, the impugned order of detention is liable to be set aside and quashed.

7. For the foregoing reasons, the petition succeeds, the order of detention dated November 25, 1995 passed by the District Magistrate, Surat, which is produced at Annexure-A is hereby set aside and quashed. The respondents are directed to set at liberty the detenu immediately unless his presence is needed with reference to any other case. Rule made absolute accordingly with no order as to costs.

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